IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 881 of 1984

Hon'ble MR.JUSTICE Y.B.BHATT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NAVNITKUMAR KARAMSI

Versus

PATEL NANJIBHAI GOPALBHAI

Appearance:

MR AR THAKKER for MR JR NANAVATI for Petitioner

MR HRIDAY BUCH for MR ND NANAVATI for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 12/07/2000

ORAL JUDGEMENT

1. This is a revision under section 29(2) of the Bombay Rent Act, at the instance of the original plaintiff-landlord who had sued the respondent-defendant tenant for a decree of eviction under the provisions of the Bombay Rent Act, on the ground of nuisance and arrears of rent for more than six months.

2. The trial court, after appreciating the evidence on record, held against the landlord on the ground of nuisance. However, the trial court found that the tenant was in arrears of rent of more than six months, and since there was a dispute as to the standard rent, section 12(3)(a) would not apply. Thereupon on the application of section 12(3)(b), the trial court found that in the application for determination of standard rent filed by the tenant, the court had passed interim orders for deposit of a specified amount by the specified date, which order was not complied with. It may be noted that the interim order was not challenged in any manner by the tenant. The landlord was, therefore, obliged to file an application under section 11(4) of the Act for striking off the defence of the tenant on the ground that the interim order was not complied with. This application was granted and consequently the defence of the tenant was struck off. Consequently the trial court found that the tenant has lost the protection of section 12(3)(b) inasmuch as the tenant had not paid or tendered in court the amount stated in the interim order in the tenant's own application, and the tenant had also failed to pay or tender in court the further amount due during the pendency of the suit, in terms of clause (1) of section 12(3)(b). The trial court, therefore, passed a decree for eviction against the tenant.

3. The tenant, therefore, preferred an appeal under section 29(1) of the Bombay Rent Act. The lower appellate court confirmed the finding of the trial court against the landlord on the ground of nuisance. However, the lower appellate court upset the finding of the trial court to the effect that the tenant was in arrears of rent for more than six months or that he has lost the protection of section 12(3)(b). The appeal of the tenant was, thereupon allowed and the decree of eviction was set aside. Hence the revision by the present petitioner-landlord.

4. This court is aware of the limitations of its jurisdiction under section 29(2) of the Bombay Rent Act, where findings of fact cannot lightly be interfered with, and that interference is justified only where there is a total misapplication of the law, a total misappreciation of facts, or where permitting the findings and conclusions to stand would amount to travesty of law and miscarriage of justice.

5. On the facts of the present case I find that this is precisely the situation, which calls for interference

by the court.

6. On a total and comprehensive reading of the lower appellate court's judgement it becomes obvious that it has misunderstood the facts as also misapplied the law. The lower appellate court has found the suit notice to be illegal and bad in law mainly on the ground that although the monetary claim asserted in the suit notice was in respect of arrears of four months, the monetary claim put forth in the suit was in respect of arrears of 11 months. Although factually this may be correct, that by itself does not render the suite notice illegal. The only requirements of a statutory notice contemplated by section 12(2) of the Act are that the suit notice must be served in the manner prescribed under section 106 of the Transfer of Property Act, and that the landlord must wait for a period of one month after the service of the suit notice upon the tenant, before filing the suit in question. Obviously, these two requirements have been met in the present case. Merely because the monetary claim was in respect of four months and the suit claim on a subsequent date was for 11 months would not render the suit notice illegal. At best the tenant could only contend that the suit claim in terms of arrears should be restricted to four months. However, such a contention would not have benefitted the tenant in any manner if on the facts and evidence it was found that he was in arrears of rent for 11 months, i.e. factual finding recorded. Furthermore, it is well settled law that in order to avail of the protection of Rent act, the tenant cannot take up plea of a time-barred debt. In other words, even if the arrears of rent exceeds 36 months or proportionate period prior to the suit notice, the tenant cannot avail of such a plea and simultaneously take the benefit of the beneficial provisions of the Rent Act. Thus, the finding of the lower appellate court that the suit notice is illegal on this ground is completely irrational and requires to be quashed and set aside.

7. The next aspect which requires consideration is as regards the proper interpretation and application of section 12(3)(b) of the said Act to the facts found in the case.

8. The lower appellate court was in grievous error when it found that the order striking off the defence of the tenant was not a legal order, or that there is no provision in law whatsoever for passing such an order. The lower appellate court totally failed to appreciate that section 11(3) specifically contemplates that the court has the power to direct the tenant to make the

necessary deposit in court, and thereafter on monthly or periodic basis continue to pay the necessary amount pending the final decision of the application for determination of standard rent. The lower appellate court also failed to appreciate the latter part of sub-section (3) of section 11, whereby if the tenant fails to comply with the direction as to deposit of the amount, the tenant's application for determination of standard rent shall be dismissed. It is also pertinent to note that the word used in the statute is "shall", which is of a mandatory nature, and confers no discretion on the trial court.

9. The lower appellate court also failed to appreciate the object and scope of sub-section (4) of section 11, whereby the court has the power to direct that if the tenant fails to comply with any order within the time allowed by the court, the tenant shall not be entitled to appear in or defend the suit except with the leave of the court. On the facts of the case there is no dispute that the court had passed an interim order directing the tenant to deposit a specified amount by the specified date, that this order was passed in the tenant's own application for determination of standard rent, and that this interim order was neither challenged nor complied with. Under these circumstances it was not legitimately open to the lower appellate court to hold that the tenant's defence could not have been struck off.

10. In the premises aforesaid, it is found that the lower appellate court completely misdirected itself, and consequently, allowed the appeal of the tenant. Therefore, this revision is required to be allowed, the judgement and decree of the lower appellate court is required to be set aside, and the judgement and decree of the trial court be restored. It is accordingly so found and directed. Rule is made absolute with costs.

******